

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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ANGIE MCJUNKIN, an individual,

Plaintiff,

vs.

WAL-MART STORES, INC., a Nevada  
corporation,

Defendant.

Case No.: 2:10-cv-01101-RLH-PAL

**ORDER**

(Motion to Remand—#14)

Before the Court is Plaintiff Angie McJunkin's **Motion to Substitute DOE I and Remand** (#14), filed December 8, 2010. The Court has also considered Defendant Wal-Mart Stores, Inc.'s ("Walmart") Opposition (#16), filed December 26, 2010, and McJunkin's Reply (#17), filed January 5, 2011.

**BACKGROUND**

On April 7, 2008, McJunkin was shopping for clothes at a Walmart in North Las Vegas. After making her selections, McJunkin claims she was walking into a fitting room when she slipped and fell on a liquid on the floor of the room. As a result of her fall, McJunkin allegedly suffered multiple injuries to her body. McJunkin filed a complaint against Walmart on

1 March 25, 2010, in the Eighth Judicial District Court for the State of Nevada, asserting the  
 2 following claims: (1) negligence, (2) premises liability, (3) *res ipsa loquitur*, and (4) negligent  
 3 hiring, training, supervision, and retention. On July 6, Walmart removed the case based on  
 4 diversity jurisdiction.

5 During discovery Walmart disclosed the name of Helena Beltran as the employee  
 6 responsible for maintaining the fitting room in question. McJunkin subsequently filed this motion  
 7 asking the Court to allow her to amend her complaint to add Beltran as a defendant. In addition,  
 8 because Beltran is allegedly a Nevada resident, McJunkin asks the Court to remand the case for  
 9 lack of diversity. For the reasons discussed below, the Court denies McJunkin's motion.

## 10 DISCUSSION

### 11 I. Legal Standard

12 A party may amend a pleading once "as a matter of course" within the time  
 13 constraints set forth in Rule 15(a)(1) of the Federal Rules of Civil Procedure. After the time for  
 14 amendment as a matter of course has expired, a party may amend its complaint only by leave of  
 15 the court or by the adverse party's written consent. Fed. R. Civ. P. Rule 15(a)(2). The court  
 16 should grant leave "when justice so requires." *Id.* However, if after a case has been removed to  
 17 federal court a plaintiff seeks to join a defendant whose joinder would destroy complete diversity,  
 18 the district court has discretion to deny the joinder, or allow the joinder and remand the case to  
 19 state court. 28 U.S.C. § 1447(e); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir.  
 20 1998). In exercising its discretion, the court considers the following factors: (1) whether the party  
 21 to be joined is needed for just adjudication and would be joined under Rule 19(a); (2) whether the  
 22 statute of limitations would preclude an original action in state court against the party to be joined;  
 23 (3) whether there has been an unexplained delay in requesting joinder; (4) whether joinder is  
 24 intended solely to defeat subject matter jurisdiction; (5) whether the claims against the party to be  
 25 joined appear valid; and (6) whether denial of joinder will prejudice the plaintiff. *Winner's Circle*  
 26 *of Las Vegas, Inc. v. AMI Franchising, Inc.*, 916 F. Supp. 1024, 1027 (D. Nev. 1996).

1     **II.     Analysis**

2                     Considering the factors outlined above, the Court exercises its discretion to deny  
3     joinder of Beltran. To begin with, Beltran is not necessary for the just adjudication of this case.  
4     Any recovery for Beltran's alleged negligence can be recovered from Walmart under the doctrine  
5     of *respondeat superior*. *Burnett v. C.B.A. Sec. Service, Inc.*, 820 P.2d 750, 752 (Nev. 1991).  
6     Furthermore, there is no indication that Walmart would not be able to satisfy any judgment  
7     McJunkin obtains. And because Beltran does not own any appreciable assets, McJunkin's ability  
8     to obtain complete relief would not be prejudiced by excluding Beltran. In addition, McJunkin's  
9     ability to establish her case against Walmart would not be prejudiced because Beltran would still  
10    be available to testify and be examined regarding her conduct in connection with the alleged  
11    accident. Therefore, the only meaningful consequence that McJunkin could obtain in joining  
12    Beltran would be to destroy diversity and have the Court remand the case to the Eighth Judicial  
13    District.

14                    Finally, McJunkin argues that she will be prejudiced in her claim against Beltran  
15    because the incident giving rise to McJunkin's claim occurred almost three years ago—well  
16    beyond the two-year period established by Nevada law. N.R.S. § 11.190(4)(e) ("an action to  
17    recover damages for injuries to a person . . . caused by the wrongful act or neglect of another" may  
18    only be commenced within 2 years). However, any prejudice that this may cause to McJunkin is  
19    not sufficient to convince the Court that joinder of Beltran is necessary or proper. Accordingly,  
20    the Court denies McJunkin's motion.

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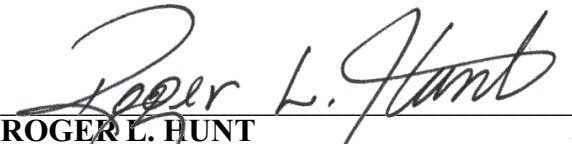
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**CONCLUSION**

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that McJunkin's Motion to Remand (#14) is DENIED.

Dated: March 16, 2011

  
**ROGER L. HUNT**  
Chief United States District Judge